

FUNDING AGREEMENT BETWEEN  
THE CITY OF MOUNTLAKE TERRACE AND THE CITY OF EDMONDS  
TO DEVELOP CAPITAL IMPROVEMENT PROJECT DESCRIPTION, SCOPE AND COSTS  
FOR PROJECTS LISTED IN THE LAKE BALLINGER/MCALEER CREEK FORUM  
CAPITAL IMPROVEMENT PLAN

This agreement ("Agreement") is made and entered into on this day by and between the City of Mountlake Terrace ("Mountlake Terrace"), a municipal corporation of the State of Washington, and the City of Edmonds ("Edmonds"), a municipal corporation of the State of Washington, hereinafter referred collectively as Parties.

WHEREAS, Mountlake Terrace and Edmonds have in the past cooperatively shared responsibility for water resource issues in the Lake Ballinger Basin; and

WHEREAS, property owners on the shores of Lake Ballinger have experienced flooding of their property; and

WHEREAS, Mountlake Terrace and Edmonds have participated as member jurisdictions of the Lake Ballinger/McAleer Creek Forum along with the cities of Lynnwood, Lake Forest Park, Shoreline and Snohomish County to collectively deal with flooding issues within the greater Lake Ballinger/McAleer Creek watershed; and

WHEREAS, the Strategic Action Plan and Capital Improvement Plan developed in January 2010 and approved by the Forum calls for projects to be jointly undertaken to address flooding concerns along the shorelines of Lake Ballinger between Mountlake Terrace and Edmonds; and

WHEREAS, the work to prepare initial project descriptions, and project cost opinions are necessary to implement priority A and B projects in the Phase I category for the upper McAleer Creek/Lake Ballinger portion of the Capital Improvement Plan;

WHEREAS these project descriptions and cost options will lead to permits, project designs, plans, and specifications used to construct the projects in the Capital Improvement Plan;

NOW, THEREFORE, in consideration of the mutual promises by the parties set forth herein and subject to the terms and provisions contained herein, Mountlake Terrace and Edmonds agree to the following:

**1. Purpose:**

It is the purpose of this agreement to develop project descriptions, plans, specifications and costs for the priority A and B projects identified to be the joint responsibility of Mountlake Terrace and Edmonds as listed in the Forum Capital Improvement Plan attached hereto as Exhibit 1 and incorporated by reference.

## **2. Implementation:**

Edmonds agrees to reimburse Mountlake Terrace up to the maximum dollar amount as identified in paragraph 2.2(B) for work to develop project descriptions, plans, specifications and costs opinions for Capital Improvement Projects listed in the Forum Capital Improvement Plan and designated as joint Mountlake Terrace – Edmonds projects and as further described in the Scope of Work attached hereto as Exhibit 2 and incorporated by reference.

### **2.1 Mountlake Terrace agrees and shall:**

A. Draft the scope of work for a qualified consultant that shall include research and review of existing engineering studies, development of project descriptions, plans, specifications and cost opinions for projects identified to be the joint responsibility of Mountlake Terrace and Edmonds in the Capital Improvement Plan. The scope of work, schedule, and budget shall be approved by the designated Project Managers of both parties and shall not exceed \$250,000.

B. Develop and manage a professional services contract for a qualified consultant.

C. Act as fiscal agent for the parties regarding all funds involved in the project.

D. Receive and manage the funds.

E. Enter into a professional service contract with a qualified firm, individual, or entity based upon the recommendations of the Project Managers from both parties, provided however the final decision shall be Mountlake Terrace's sole discretion.

F. Respond to public records requests made to it relating to the proposed work and will assist Edmonds in response to records requests made to the City of Edmonds.

G. Pay fifty-percent (50%) of the cost for a qualified consultant to perform the tasks listed in the Scope of Work not to exceed \$35,000 for calendar year 2011. For calendar years 2012 and 2013, paying up to \$45,000 each year, but only if such funds are appropriated by City Council in the budget for these years.

H. Provide two hard copies and one electronic copy of the draft and final work to Edmonds.

I. Show good faith in responding to any comments Edmonds may have on the work and incorporating such comments into the final work.

### **2.2 Edmonds agrees and shall:**

A. Have its designated Project Manager work closely with the Mountlake Terrace Project Manager on technical issues related to the project scope, especially on hydrology/hydraulic issues, including providing timely, technical review of all consultant deliverables.

B Pay fifty-percent (50%) of the cost for a qualified consultant to perform the tasks listed in the Scope of Work not to exceed \$35,000 for calendar year 2011. For calendar years 2012 and 2013, paying up to \$45,000 each year, but only if such funds are appropriated by City Council in the budget for these years.

**3. Payment to Mountlake Terrace:**

Edmonds shall make payment to Mountlake Terrace, subject to the limits in section 2.2(B), above, within thirty (30) days of a request for reimbursement for costs/fees documented by a contract billing from the consultant performing the work.

**4. Representatives:**

The Parties shall each designate project managers who have authority to administer all aspects of the Agreement. The Parties shall notify each other in writing within fourteen (14) days of the execution of this Agreement of these assignments, and shall promptly give notice of any change in the assigned project manager. No separate entity is created by this Agreement.

**5. Indemnification:**

Each party shall defend and indemnify the other, their officers, agents, and employees from any and all judgment, claims, actions, suits, liability, loss, costs, expenses, including reasonable attorney's fees, and damages of any nature, arising out of each party's share of negligent action in the performance of this agreement. It is further specifically and expressly understood that the indemnification provided herein constitutes the parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

**6. Termination:**

6.1 Either party may terminate their involvement in this Agreement upon the provision of ten (10) days written notice to the other party, provided that said termination notice must be received by the other party prior to the date on which a contract for the consulting services described herein is awarded.

6.2 Following the execution of a consulting contract, either party may terminate their involvement in the Agreement but shall remain obligated to pay for 50 % of the work performed by the consultant prior to the date of termination.

6.3 Unless terminated as provided above, this Agreement shall remain in effect until completion of the Scope of Work by a qualified consultant.

6.4 If, on the action of either party, this Agreement should be terminated and the contract for project development is also terminated, either party may continue to complete the

work for project development on their own and shall have all rights to any partial work performed under this Funding Agreement to the date of termination.

## **7. Legal Relations and General Provisions:**

7.1 No joint venture, agent-principal, partnership or separate legal or administrative authority is created by this Agreement unless expressly stated herein. No employees or agents of one party or any of its contractors shall be deemed, or represent themselves to, employees of another party.

7.2 It is the specific intent of the Parties, and both Parties agree that this Agreement shall not confer third party beneficiary status on any non-party.

7.3 Mountlake Terrace shall require any contractor retained for described work to maintain Commercial General Liability, Automobile Liability and Professional Liability policies insuring Edmonds, their officers, officials, agents and employees, as additional insureds. The contractor's insurance shall be the primary to and not contributing with any insurance or self insurance that may be carried by Edmonds.

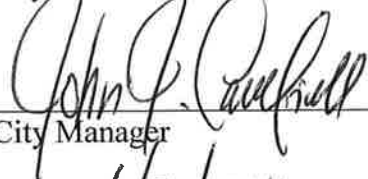
7.4 The obligations of the Parties under all provisions of this Agreement, which may reasonably be interpreted or construed as surviving the completion, termination, or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement any expiration or termination of this Agreement.

7.5 This Agreement, inclusive of the Scope of Work and attachments hereto, contains the entire agreement and understanding of the parties with respect to this undertaking, and supersedes all prior oral or written understandings, agreements, or promises. This Agreement may not be modified or amended except by written instrument executed by the Parties' authorized representatives.


7.6 This Agreement may be executed in counterparts, each shall be deemed an original instrument, and all counterparts together will constitute one and the same Agreement.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed the day and year first herein above written.

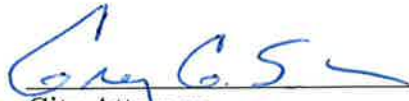
City of Mountlake Terrace

  
\_\_\_\_\_  
City Manager  
6/30/2011  
\_\_\_\_\_  
Date

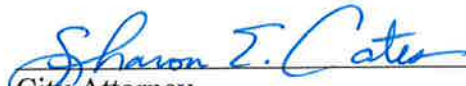
City of Edmonds

  
\_\_\_\_\_  
Mayor  
6/30/11  
\_\_\_\_\_  
Date

Approved as to Form

  
\_\_\_\_\_  
City Attorney  
6-28-2011  
\_\_\_\_\_  
Date

Approved as to Form

  
\_\_\_\_\_  
City Attorney  
7-7-11  
\_\_\_\_\_  
Date

Action or Project		Priority	Description	Lake Ballinger/Hall Creek		McAleeer Creek		Project	
				Watershed Issue A	Watershed Issue B	Watershed Issue C	Watershed Issue D	Projected Planning Level Cost	Project
<b>Lower McAleeer Creek</b>								<b>(2009 dollars)</b>	
<b>Phase I</b>	<b>Forum Project</b> Model the McAleeer Creek flood plain in Lake Forest Park and Shoreline to update FEMA flood plain mapping information	A1	Accurately model flow and determine flood plain elevations for McAleeer Creek from Lake Ballinger to Lake Washington - develop modeling and flood plain management guidelines to assist the Cities of Shoreline and Lake Forest Park with future development or redevelopment and to leverage FEMA funds for flood proofing program. <b>This portion of the FEMA flood plain mapping project will assume flows from Lyon Creek have been redirected or minimized.</b>			X		\$750,000 to \$1,000,000	
	<b>Private Project</b> Develop and implement flood proofing program	A2	Leverage FEMA funds for flood proofing program			X		\$2,000,000 to \$3,000,000	
	Lyon Creek Bypass/Lyon Creek Channel Modifications	B	Forum to provide encouragement to Lake Forest Park to seek funds to eliminate the Lyon Creek overflow to McAleeer Creek during storm events			X		\$3,100,000	La
	McAleeer Creek Bypass Intake Retrofit	C	Retrofit McAleeer Creek Bypass Intake to optimize facility function			X		\$213,000	
<b>Phase II</b>	Upgrade/Replace Culverts on McAleeer Creek	D	Enhance and replace four culverts on McAleeer Creek in Lake Forest Park			X		\$1,000,000	
	McAleeer Creek Flood Berms	E	Install berms or other flood proofing along McAleeer Creek in Lake Forest Park			X		\$830,000	
	Basin Wide LID Retrofits	F	Retrofit existing city parcels and right of way with Low Impact Development BMP's	X	X	X	X	\$5,000,000 to \$10,000,000 over 20 years	Ap
<b>Upper McAleeer Creek/Lake Ballinger/Hall Creek</b>									
<b>Phase I</b>	<b>Forum Project</b> Model the Hall Creek and Lake Ballinger flood plain in Edmonds and Mountlake Terrace to update FEMA flood plain mapping information	A1	Accurately model flow and determine flood plain elevations for Hall Creek and Lake Ballinger - develop modeling and flood plain management guidelines to determine the most advantageous elevation of Lake Ballinger weir	X				\$750,000 to \$1,000,000	
	<b>Private Project</b> Develop and implement flood proofing program	A2	Leverage FEMA funds for flood proofing program	X				\$1,000,000 to \$2,000,000	
	McAleeer Creek Weir								
	Action I	B <sup>2</sup>	Install new weir gate	X	X			\$25,000	
	Action II	B1	Lower weir structure to first Nile culvert - <b>1.5 feet lower</b> - install new weir foundation and dredge creek channel to lake	X				\$500,000	
	Action II	B1	Lower weir structure to first Nile culvert - <b>1.5 feet lower</b> - install new weir foundation and dredge creek channel to lake	X				\$500,000	
	Action III	B2	Lower weir structure by <b>3.75 feet</b> - install new weir foundation and dredge creek channel to I-5	X				\$1,000,000	
	Action III	B2	Lower weir structure by <b>3.75 feet</b> - install new weir foundation and dredge creek channel to I-5	X				\$1,000,000	
<b>Phase II</b>	Hall Creek Detention	C	Install detention or infiltration system upstream of Lake Ballinger	X				\$12,000,000 not including land acquisition	aj c
	Basin Wide LID Retrofits	D	Retrofit existing city parcels and right of way with Low Impact Development BMP's	X	X	X	X	\$5,000,000 to \$10,000,000 over 20 years	aj c

<sup>1</sup> Service levels are listed in Section 3 of the Strategic Action Plan, page 15 - 20

<sup>2</sup> Weir gate replacement is contingent on decisions made about the ultimate level of the lake

<sup>3</sup> Future governance agreement will incorporate and identify potential funding sources

<sup>4</sup> A member agency representing the interests of the Lake Ballinger/McAleeer Creek Forum

## **SCOPE OF WORK**

### **LAKE BALLINGER LAKE LEVEL AND FLOODING ISSUES**

**Lake Level and Outlet Study – Project Development for Priority A and B projects listed as joint Mountlake Terrace and Edmonds responsibility in the upper McAleer Creek/Lake Ballinger portion of the Forum Capital Improvement Plan**

**OBJECTIVE:** IMPROVE FLOODPLAIN MANAGEMENT AND LAKE LEVEL CONTROL BY REPLACING THE CULVERTS ON MCALEER CREEK BETWEEN THE LAKE AND I-5 WITH EITHER OPEN-BOTTOMED BOX CULVERTS OR PEDESTRIAN BRIDGES AND REMOVING BARRIER VEGETATION FROM THE STREAM CHANNEL. THESE MODIFICATIONS WILL MORE EFFECTIVELY MANAGE THE LEVEL OF LAKE BALLINGER AND ENABLE THE DEVELOPMENT OF AN UPDATED OPERATIONS PLAN FOR THE LAKE. ONCE THE MODIFICATIONS ARE COMPLETED, THIS WILL FACILITATE DEVELOPMENT OF AN UPDATED FEMA FLOODPLAIN MAP.

#### **INTRODUCTION**

Lake Ballinger has experienced periodic high lake levels as a result of flooding events a number of times going back to the mid 1940's. More recently storm events in 1997, 2003, and 2007 caused flooding of yards, docks, and houses surrounding the lake. To address these flooding problems, the Cities of Edmonds, Lake Forest Park, Lynnwood, Mountlake Terrace, and Shoreline along with Snohomish County formed the Lake Ballinger/McAleer Creek Watershed Forum to develop a Strategic Action Plan to address flooding, water quality and habitat preservation issues.

The Strategic Action Plan was approved by the Forum and by all member jurisdictions in 2009. A Capital Improvement Plan was developed and approved in January 2010. The CIP listed thirteen separate projects with lead agencies for each project. In the Upper Watershed/Lake Ballinger portion of the list, there are six specific Phase 1 projects that involve both Edmonds and Mountlake Terrace.

As discussion has ensued regarding the specific direction of the Phase I projects and additional work has been undertaken (City of Edmonds NHC Study) to address high water levels at Lake Ballinger, two issues have come to light regarding lake level.

1. **The existing culverts on Nile Temple golf course property negatively affect the flow of water through McAleer Creek at high lake stage.**
2. **The existing weir outlet to Lake Ballinger controls the level of Lake Ballinger according to the adjudicated Superior Court Order during the months of June through October. From November to May, however, the influence of vegetation in the creek and the**

influence of the first culvert downstream of the weir appear to be controlling the level of Lake Ballinger to a greater degree than the weir.

### **PROPOSED METHODOLOGY TO ADDRESS THE LEVEL OF LAKE BALLINGER**

The main objective of this work is to address the issue of flooding of living spaces on residential properties at the south end of the lake and adjacent areas caused by high lake levels. To this end, the cities of Edmonds and Mountlake Terrace propose to:

1. Further refine the existing flow model in the upper watershed to provide a better tool for accomplishing items 2 through 4 below and to develop an operations plan for the level of the lake in accordance with Project A1.
2. Determine the best approach to replace or remove the culverts within McAleer Creek on Nile Temple property to meet the overall goal of the Phase I projects to reduce the frequency and extent of flooding events. Develop plans, specifications and cost estimate for a recommended project.
3. Analyze options to maximize the effectiveness of the existing McAleer Creek weir for both flow control and for water quality issues related to the hypolimnetic withdrawal system.
4. Develop a flood plain map for Lake Ballinger and Hall Creek. Specifically, the map would show 100 year flood elevations and those properties most at risk by high water levels at Lake Ballinger and on Hall Creek.

### **PHASE I- TOTAL BUDGET \$160,000**

#### **TASK 1—GATHER AND REVIEW EXISTING DATA AND IMPROVE THE EXISTING MODEL OF THE UPPER WATERSHED**

Review available plans, maps, and data that may impact surface water in the study area. Mountlake Terrace and Edmonds can provide to the Consultant the items identified below:

- City of Edmonds – NHC Modeling Study
- City of Lake Forest Park McAleer Creek Flood Mitigation Study
- Lake Ballinger/McAleer Creek Strategic Action Plan
- Lake Ballinger/McAleer Creek Capital Improvement Plan
- 2007 Clear Creek Lake Level Study
- 1999 City of Lake Forest Park Comprehensive Drainage Plan for McAleer Creek
- Storm Drainage System Schematic Maps
- Topographic maps
- Existing and projected land use maps
- Precipitation records and lake level gauge information
- Basin Study information
- McAleer Creek Plan and Profile (1982 Lake Ballinger Restoration Project)



### ■ Other relevant studies.

Build on the work previously performed under the 1999 Lake Forest Park study, the 2008 Clear Creek Lake Level Study, the 2009 Forum Strategic Action Plan, the 2010 Lake Forest Park Flood Mitigation Study, and the City of Edmonds/NHC modeling study to develop and provide a definitive flow model. Per recommendation in the NHC report, obtain stream flow data for Hall Creek and McAleer Creek for at least 2 months, refine the land use data, and improve on the existing flow model. Further modeling will improve flow calibration through the system and provide a better tool to analyze alternative flow scenarios.

**Deliverable:** An updated hydrologic and hydraulic model of the upper watershed that can be used to assess various design alternatives for lowering the lake level during winter storm events

### **TASK 2-ASSESS THE RELATIONSHIP BETWEEN LAKE LEVEL, EXISTING WEIR PERFORMANCE AND CAPACITY OF THE CULVERTS ON NILE TEMPLE PROPERTY AND AT INTERSTATE 5. ASSESS THE EFFECT OF VEGETATION WITHIN THE CREEK BED AND BANK ON LAKE LEVEL.**

It is anticipated that developing an accurate flow model may take one or more winter seasons of data. Concurrent with data collection, the following issues will be analyzed:

1. What is the affect of replacing/modifying the Nile culverts on lake levels and flood frequency of structures historically subject to flooding?
2. What is the role of the existing weir on lake levels based on its current operation that is designed to conform to the requirements in the adjudicated order? Are there alternative weir configurations that can optimize the operation of the lake in terms of lake level?
3. What is the effect of existing vegetation within the creek channel and creek banks and what is the effect, if any, on creek and lake level.
4. It is understood that the flow model will become more defined over time. Initial information will be used to identify issues that will need further refinement such as land use data in the basin and flow parameters through conveyance pipes.
5. Develop and refine a project to meet the Phase I Capital Improvement Plan goal to reduce flooding frequency and extent on the lake.

### **Deliverables:**

1. A memo describing the affect of replacing/modifying the Nile culverts on lake levels and flood frequency of structures historically subject to flooding. This memo will describe the role of the existing weir on lake levels based on the operation plan developed in conformance with the lake level requirements of the 1982 adjudicated Superior Court Order as part of the Lake Ballinger Restoration Project. The memo will also describe the effect of existing vegetation within the creek channel and banks on the level of McAleer Creek downstream of the weir. The memo will list specific project recommendations to reduce flooding frequency and extent on the lake.
2. A memo describing the additional data needs, if any, to delineate a FEMA-recognized base flood elevation. This base flood elevation determination would only be done AFTER any improvements to the culverts and weirs are installed.

### **TASK 3- DEVELOP A DESIGN AND PERMITTING PACKAGE THAT CAN BE SUBMITTED TO THE APPROPRIATE REGULATORY AGENCIES FOR REVIEW AND APPROVAL**

A set of design plans will be drafted to replace the three existing culverts on McAleer Creek located between the outlet weir and the I-5 culvert. These draft plans will be submitted with the necessary environmental reports and permit applications to obtain the necessary permits for the replacements. Included in the plans, permits, and any environmental reports will be recommendations for vegetation removal within the creek channel and banks along with mitigation for such removal as necessary. Based on the results of task 2, this may also include permit applications, environmental reports, plans, specifications, and a cost estimate for any recommended weir improvements or changes.

### **TASK 4 – FINALIZE THE PERMITTED DESIGN BY PREPARING CONSTRUCTION PLANS, SPECIFICATIONS, AND COST ESTIMATE.**

Finalize plans approved by all agencies in Task 3 and prepare all construction documents.

### **PHASE II - ESTIMATED COST \$250,000 TO \$350,000.**

### **TASK 5—CONSTRUCT IMPROVEMENTS TO OUTLET STRUCTURES PER TASK 3 (IMPLEMENT THROUGH A SEPARATE AGREEMENT AND FUNDING SOURCE)**

Install replacement culverts, remove vegetation as needed, and modify weir as designed on Task 4. These improvements will be accomplished through a funding agreement to be developed between the City of Mountlake Terrace and the City of Edmonds at such time as the final project scope and cost is determined.

### **PHASE III - ESTIMATED COST \$90,000**

### **TASK 6-DEVELOP AN UPDATED FLOOD PLAIN MAP FOR LAKE BALLINGER AND HALL CREEK (LIKELY IMPLEMENTATION THROUGH A SEPARATE AGREEMENT AND FUNDING SOURCE).**

Once the other five Tasks are completed, develop an updated map showing the extent of the flood plain on Lake Ballinger and upstream on Hall Creek to the northerly boundary of Mountlake Terrace at 212<sup>th</sup> St. SW. This map will provide guidance to future land use, development, and redevelopment along the affected shorelines and flood plains. At this time funding is not included for this task. A separate funding agreement will be developed between the City of Mountlake Terrace and the City of Edmonds to execute this task.

### **PROJECT BUDGET AND TIMEFRAME**

The total estimated budget for all phases of this project is \$500,000 to \$600,000. Work will begin immediately after the execution of the interlocal agreement and will target to have Phase I and Phase II completed by October 1, 2012. Meeting this target is contingent on the Councils of both jurisdictions allocating the necessary funds in 2012, staff availability, and the ability to acquire the necessary permits from the City of Mountlake Terrace, the US Army Corps of Engineers, the Washington Department of Ecology, and the Washington Department of Fish and Wildlife.